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DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-203186

DATE: December 29, 1981

MATTER OF: Lula F. Fones - Request for Waiver of
Indebtedness

DIGEST: Reemployed annuitant requests waiver of overpayments of pay where agency listed her annuity as \$1,024 per annum instead of \$1,024 per month. Waiver is granted since employee informed her Personnel Office and Payroll Office Liaison of the overpayment and she was assured that the payments were correct.

Mrs. Lula F. Fones, a reemployed annuitant, appeals the denial by our Claims Group of her request for waiver of a claim against her by the United States for recovery of \$11,210.55 in erroneous salary payments. The waiver may be granted for the following reasons. Mrs. Fones was receiving an annuity from the Civil Service Commission, and was appointed by the Department of Labor to a position as a Workers Compensation Claims Examiner, GS-13, step 5, on May 12, 1975. The Notification of Personnel Action, DL Form 50, appointing Mrs. Fones correctly stated that she was a reemployed annuitant, and that her appointment was only temporary. However, her annuity was listed on the DL form 50 as \$1,024 per annum instead of \$1,024 per month. As a result, her salary was reduced by her monthly annuity rate instead of her annual rate, and she was overpaid in the gross amount of \$11,210.55 for the period from May 12, 1975, through August 13, 1977.

Mrs. Fones states that she was aware that her salary would have to be reduced by the amount of her annuity. She also states that the amount of her first check was more than she had expected, and that she made inquiries with the U.S. Department of Labor Personnel Office. The Personnel Office informed Mrs. Fones that the amount of her check was correct, but suggested that she contact the Payroll Office. She went to the Payroll Office where her file was pulled and she was assured that her proper annuity was being deducted and that the amount of pay she was receiving was correct. Mrs. Fones says that considering these responses she was convinced that she was not being overpaid and accepted her checks in good faith.

The administrative report from the Department of Labor states there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, and that the overpayment of salary occurred as a result of the issuance of erroneous Notification of Personnel Actions which reflected monthly annuity rates instead of annuity settlements for a year. The Department of Labor recommends that the salary overpayment be waived.

The authority to waive overpayments of pay and certain allowances is contained in 5 U.S.C. § 5584 (1976), which provides that the Comptroller General may waive a claim, the collection of which would be against equity and good conscience and not in the best interests of the United States. Generally, these criteria will be met by a finding that the erroneous payment of pay or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. 4 C.F.R. § 91.5(c) (1980).

In this case, Mrs. Fones reported the overpayment to her Personnel Office and to the liaison officer for the Payroll Department. Thus, she acted in a manner that a reasonable and prudent employee would under the circumstances. Mrs. Fones was advised on several occasions by several authorities that her pay was correct. She did not have any special knowledge of personnel laws nor did she work in a position in which such knowledge was required. Therefore, we believe that it was reasonable for her to rely on the advice given by the Personnel Office and Payroll Office liaison officer concerning the accuracy of her pay. See James H. Schroeder, B-186262, June 28, 1976.

While Mrs. Fones' Form DL-50 contained information that might have caused her to further question the accuracy of her pay, the record indicates that she was inadequately informed of the manner of the reemployed annuitant reduction. She says that the Form DL-50 arrived after her inquiries to the Personnel Office and Payroll Division Office's liaison. Therefore, after being informed several times of the accuracy of her pay, she might reasonably conclude that the initial Form DL-50

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was an accurate reflection of her pay situation. This could also have caused her to conclude that any additional Form DL-50's that she received were likewise correct. See Thomas J. Strenger, B-182311, November 7, 1974.

In view of this and since the overpayments of pay resulted from administrative error, the indebtedness of \$11,210.55 is hereby waived under authority of 5 U.S.C. § 5584 (1976).

Harry R. Van Cleave
For Comptroller General
of the United States